REMARKS

The Office Action of November 5, 2004 has been reviewed and the comments therein were carefully considered. Seven (7) claims (Claims 9-14, 16 and 17) remain pending in this application through this Amendment. Claims 1-8 and 15 have been withdrawn from consideration. Claims 9, 11 and 16 have been amended herein. No new matter has been introduced into the application. As explained in more detail below, Applicant submits that all claims are in condition for allowance and respectfully requests such action.

Restriction Requirement

In the Office Action mailed November 5, 2004, claims 1-17 were deemed to be subject to a restriction/election. More specifically, restriction is required for Group I, (Claims 1-8 and 15); and Group II, (Claims 9-14 and 16-17).

By this Response and Amendment, Applicants hereby elect Group II (Claims 9-14 and 16-17) without traverse. The Applicants' election is without prejudice or admission with respect to the Applicants' right to re-file the withdrawn claims in a divisional application.

Objection to the Specification

The specification is objected to because the current title is alleged to be not descriptive and clearly indicative of the invention to which the claims are directed. By this amendment, the title has been amended and the Applicants, therefore, respectfully requests reconsideration of this rejection.

The Examiner also objects to the specification's failure to provide the Serial Number of the provisional application claimed for priority in paragraph 1 of the application. By this amendment,

the specification has been amended to claim priority to U.S. Application Ser. No. 60/329,796, filed

on October 16, 2001. The Applicants, therefore, respectfully request reconsideration.

Rejection under 35 U.S.C. § 103 – Muntz

Claims 9-13 and 16-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over

U.S. Patent Application Publication No. 2002/0152214 to Muntz, hereinafter referred to as Muntz.

In response, the Applicants submit the claimed invention is not obvious in view of the cited

reference, as Muntz is directed to an entirely an entirely different problem. Indeed, Muntz explicitly

sets forth "[t]he present invention is directed to a lease management system in a distributed file

system where a meta-data server manages the file system meta-data and a plurality of storage servers

manage file data."(Muntz, page 1, paragraph 16, emphasis added). In fact, "with each lease granted,

the meta-data server provides data that indicate the time at which the lease will expire for the

associated object."(Muntz, page 1, paragraph 8, emphasis added).

The present invention does not concern the leasing of objects and their related meta-data, but

rather to determine if nodes are responsive, such as for example, to determine if a valid

communications link exists. To more clearly point out and distinctly claim the invention, claims 9,

11 and 16 have been amended to include the step of "determining that the recipient node is non-

responsive when the elapsed time exceeds the time period in the time contract". Indeed, unlike the

nodes in the Muntz reference, nodes of the present invention may be involved in multiple

transactions having more than one time contract, for example, to correspond to an entirely different

type of transaction. Along these lines, each time contract for the individual transactions may be

negotiated and determined by consulting differing parameters and inputs and are not limited to meta-

data of associated objects. Consequently, Applicants respectfully request reconsideration and withdrawal of this rejection in regards to claims 9, 11, 16 and their respective dependant claims.

Rejection under 35 U.S.C. § 103 – Muntz in view of Iizuka

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0152214 to Muntz in view of U.S. Patent Application Publication No. 2001/0090118 to Iizuka. In response, the Applicants submit the claimed invention is not obvious in view of the cited references as the teaching, motivation, or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. The Examiner states that "[i]t would have been obvious to one of skill in the art at the time the invention was made to modify Muntz with Iizuka's teachings because it would have enabled adjusting time contract according to changes in network condition." However, no motivation to combine Muntz with Iizuka was provided in the Office Action nor does the prior art suggest a modification of Muntz or combination with Iizuka to arrive at the claimed invention.
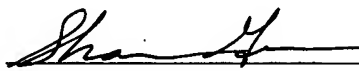
Indeed, as explained in more detail above, Muntz is directed to solving an entirely different problem with an entirely different method. Indeed, every embodiment of Muntz is directed to managing meta-data of an associated object. Therefore, even when using impermissible hindsight to combine the two references, an entirely different product solving an entirely different problem is created. Therefore, Applicants respectfully traverse this ground for rejection and request reconsideration.

Conclusion

The Applicants respectfully submit that the instant application is in condition for allowance. No new matter has been introduced by this response. Should the Examiner believe that a conversation with the Applicants' representative would be useful in the prosecution of this case, the Examiner is invited and encouraged to call Applicants' representative at the number below.

Respectfully submitted,

Dated: _1/10/05_

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